

DRAFT 4/2/13 – SUBJECT TO CHANGE
For Review and Adoption by DSC at April 25, 2013 Meeting
DELTA STEWARDSHIP COUNCIL
March 28-29, 2013
Holiday Inn Capitol Plaza
300 J Street, Sacramento, California, 95814

MEETING SUMMARY

Thursday, March 28, 2013, 9:00 a.m. – 4:30 p.m.

1. Welcome and Introductions

The meeting was called to order at 9:01 a.m., March 28, 2013, by Chair Phillip Isenberg, with the Council acting as a committee until a quorum was established.

3. Chair's Report

Chair Isenberg introduced new Council member, retired Judge Frank C. Damrell, Jr. Judge Damrell was appointed by the Governor on March 13, 2013. After his retirement as a judge at the U.S. District Court for the Eastern District of California in 2011, Judge Damrell has been counsel at the law offices of Cotchett, Pitre and McCarthy LLP. A bio for Judge Damrell is posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/13-0314%20Frank%20C%20%20Damrell%20Jr%20Bio.pdf>

2. Roll Call – Establish a Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established at 9:05. The following members were present: Patrick Johnston, Gloria Gray, Frank Damrell, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: Hank Nordhoff

4. Executive Officer's Report (Information Item)

Chris Knopp began the Executive Officer's Report by discussing the three letters included in the meeting materials in response to the Delta Independent Science Board's (ISB) review and comments on BDCP, Chapter 7. The letters were from AquaAlliance, Department of Water Resources (DWR), and Coalition for a Sustainable Delta. Mr. Knopp requested that at the April 25-26 meeting, time be set aside to discuss and develop performance standards for him now that he has been in the position for six months. Mr. Knopp also introduced the new Deputy Executive Officer for Science, Dr. Rainer Hoenicke, who comes to the Council from the San Francisco Estuary Institute.

a. Legislative Update

The Legislative Update was presented by Jessica Pearson. Ms. Pearson reported the legislature was on spring recess and would return to session in April – budget subcommittee hearings were nearing conclusion and the focus would shift to bill hearings in the various policy committees. Ms. Pearson stated the beginning of May is the deadline for bills to move out of the policy committees in order to move forward. Many bills were being scheduled for hearings as early as next week. A complete list is included in the Monthly Bill Tracking Report. Ms. Pearson reported that Assembly member Ben Hueso, Chair of the Assembly Water Parks and Wildlife Committee had had won a special election to the Senate and has been replaced as Chair by Assembly member Anthony Rendon from Lynnwood. Ms. Pearson reported on two

informational hearings held on the water bond, including two informational background papers she felt the Council would find helpful. Both papers were prepared by Dennis O'Connor for the Senate Natural Resources and Water Committee. Ms. Pearson is closely tracking SB 735 (Wolk), scheduled for hearing at the Senate Natural Resources and Water Committee on April 9. The bill summary states that it amends the Sacramento-San Joaquin Delta Reform Act of 2009 to exclude from the definition of covered action the approval or implementation of a project as part of a larger conservation plan pursuant to the Federal Endangered Species Act, a natural community conservation plan submitted pursuant to the Natural Community Conservation Planning Act, or certain permits related to taking, importation, exportation, or sale of endangered species. Chair Isenberg requested a briefing on AB 426 (Salas). The bill summary states the bill would allow a permittee or licensee to make a temporary change, as defined, in the point of diversion, place of use, or purpose of use, up to the amount of a permit or license, in order to transfer or exchange water or water rights through a water transfer agreement for a specified term if specific requirements are met. The bill would require a permittee or licensee to submit a notice of the transfer or exchange to the board including specific information. The bill would also require the State Water Resources Control Board to post the notice on its Internet Web site no later than 10 days after the date on which the notice was submitted, and to keep the notice posted on the board's Internet Web site for 30 days.

a. Legal Update

Chris Stevens, Chief Counsel, asked the Council's legal interns, Tori Sundheim and Janelle Krattiger to give a brief litigation update. Ms. Krattiger gave a status update on a "takings" case and Ms. Sundheim updated the Council on the delta smelt biological opinion remand and the 9th circuit decision on long-term water contract renewals. Ms. Krattiger and Ms. Sundheim's updates are posted on the Council website at

http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4a_Legal_Update_8.pdf

5. Adoption of February 21, 2013 Meeting Summary (Action Item)

Chair Isenberg asked if there were any questions, suggestions or comments from the Council or the public regarding the February 21, 2013, Meeting Summary, there were none.

Motion: (Offered by Johnston; seconded by Nottoli) to approve the February 21, 2013 meeting summary.

Vote: (4/0: Johnston, Fiorini, Isenberg, Nottoli) (Gray and Damrell abstained from vote) and the motion was adopted.

*The video showing this vote can be found at: <http://dsc.videoss.com/archives/032813/>
Agenda Item 5; Archive Segment Number 5 of 62 at 00:30.*

6. Delta Plan (Water Code §85300 (a)) (Action Item)

General Note: The Delta Plan agenda item started on Thursday, March 28 and continued on Friday, March 29, 2013.

Chair Isenberg summarized the schedule for the day and discussed the "Next Steps" outlined on Page 5 of the Delta Plan staff report (Agenda Item 6). Following Chair Isenberg's introduction, Executive Officer Chris Knopp gave brief introductory remarks on the Final Delta Plan PEIR, Rulemaking Package and Final Delta Plan. Mr. Knopp stated after two intense years, the Delta Plan process was nearing closure and drew the Council members' attention to the detailed chronology shown in Table 1 of the staff report for Agenda Item 6. Mr. Knopp stated today's discussions of Agenda Items 6a, 6b, and 6c, would focus on new information

learned from the public input process for each of the draft documents and outline the staff proposed revisions resulting from review of the comments. The draft resolutions for Council action are (1) Direction to continue preparation of the Final PEIR; (2) Final direction on several staff proposed modifications of certain regulatory elements of the Rulemaking Package along with conforming revisions to the Delta Plan's policies and recommendations; and (3) Approval of various minor drafting, editing and other corrections for the Delta Plan; (4) Consideration of steps the Council will need to take at the May meeting to certify the EIR, adopt the Delta Plan and adopt regulations based on Delta Plan policies.

Next, Dan Ray, Chief Deputy Executive Officer, gave an overview of the panel discussions and made brief remarks on the comment themes received on the Delta Plan PEIR, Rulemaking Package and Final Draft Delta Plan.

Chris Stevens also remarked on the comment periods for the PEIR and APA processes. The view of staff and legal counsel is that the modifications recommended will not require recirculation of the PEIR. However, the modifications to the proposed regulations (being "substantial but reasonably related" to the original regulations) are subject to an additional 15-day public comment period, which would occur before final Council Action anticipated in May. The Delta Plan Development Process is shown on Agenda Item 6, Attachment 2 and staff recommended Draft Resolutions for Council Action is described in Agenda Item 6, Attachment 1. Throughout the discussions of Agenda Item 6, the panel members answered Council members' questions and provided clarification.

6a. Finalize Direction to Staff Regarding Delta Plan Environmental Impact Report

Dan Ray was joined by attorneys Jim Andrew and Ellen Garber, who updated the Council on the PEIR process that began in November 2011 and provided an overview of CEQA's purpose and basic requirements. The panel discussed the review of the Delta Plan's CEQA process to date and the objectives of the Delta Plan and the coequal goals. Mr. Ray stated one of the common comments received suggested the Draft PEIR should have included a discussion of the ability of the Delta Plan Alternatives to meet Project Objectives. In response to this comment, staff prepared a draft for Council information (Agenda Item 6a, Attachment 2) entitled "Comparison of Alternatives: Ability to Satisfy Delta Reform Act's Coequal Goals and Inherent Objectives", which Mr. Ray described for the Council. Mr. Andrew discussed the lessons learned to date from the PEIR and public comments as well as the Comparison of Alternatives. Mr. Andrew stated long-term benefits will come at the cost of short-term impacts caused by construction. The Delta Plan is being modified and improved by incorporation of Delta Plan mitigation measures. A full list of all mitigation measures from the existing DPEIR is included (Agenda Item 6a, Attachment 2). The track-changes wording represents the new and improved wording for these measures that staff recommended in response to public comment and will be included in the Final EIR. Ms. Garber briefed the Council on the common themes of comments received to date.

Throughout the discussion of Agenda Item 6a, Mr. Andrew, Ms. Garber, Mr. Stevens and Mr. Ray answered Council members' questions and provided clarification.

Public Comment – Agenda Item 6

Steve Herum, City of Stockton, submitted two letters that support and supplement public comments previously submitted by the City of Stockton. The letter of concern regarding adequacy of the EIR for the Delta Plan and the letter regarding master infrastructure and utility plans are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/LETTER_OF_CONCERN_RE_INAD_EQUACY_OF_EIR_FOR_DELTA_PLAN.pdf and

http://deltacouncil.ca.gov/sites/default/files/documents/files/MASTER_INFRASTRUCTURE_AND_UTILITY_PLANS_PUBLIC_COMMENT.pdf Mr. Herum stated that both letters express concern that the regulations may discourage development/projects in the downtown Stockton area. Mr. Herum stated the city is eager to work with the Council to resolve these issues.

Greg Zlotnick, San Luis and Delta Mendota Water Authority, requested clarification regarding WR P1. Mr. Zlotnick commented on flow regime, stating he thought he heard it wouldn't cost water because local resources would be developed and changes in timing wouldn't have an impact on supply. Mr. Zlotnick commented that timing had a huge impact on operations of water systems and storage and there was a direct correlation to supply. Mr. Zlotnick also commented on mitigation measures that apply to covered actions and asked if the covered actions include the actions under WR P1 that are undertaken in local jurisdictions outside the Delta to satisfy the policies in Delta Plan.

John Mills, Upstream Water Agencies, commended the staff on the efforts that have gone into the environmental analysis and stated the work that had been done with each draft vastly improved it. Mr. Mills drew the Council's attention to the staff report for Agenda Item 6a, page 3, "What Did we Learn from the PEIR and Public Comments" section, bullet 1 – and stated he agreed, and also agreed with page 5, item d, and disagreed with page 5, item g because he felt, based upon what he has seen, water rights will be affected. Mr. Mills stated he looks forward to seeing the final draft of the EIR.

Bob Wright, Friends of the River, cited section 85086 (c)(1) and stated the Delta Reform Act calls for the Water Board -- for the purpose of informing planning decisions for the Delta Plan as well as the BDCP -- to develop flow criteria for the Delta ecosystem necessary to protect public trust resources. Mr. Wright stated that this hadn't been done and did not believe, lawfully under the Delta Reform Act or CEQA, we could call for new conveyance in the Delta before the new flow objectives to protect the declining Delta were set. Mr. Wright commented on the CEQA requirement for an accurate, stable and finite project description on a Programmatic EIR and stated he felt the illegality was that there is a project already out there – (BDCP and the tunnels) and there should be a new draft EIR released, for public review and comment, based upon the accurate, stable and finite project (BDCP) that has been known since June.

Following Public Comment, Chris Stevens requested to give a quick response to Mr. Wright's comment because he felt it was inaccurate and the Council should not be left with the idea that that the CEQA process for the Delta Plan should be stopped or delayed. Mr. Stevens stated the Delta Reform Act was put in place to address a crisis and a deadline was given. There is no insufficiency in regard to defining the project at hand. It was defined when the initial EIR was released. The Council listened to comments, had workshops and used comments to make it a better plan. Since the plan had changed based on public input, the PEIR was recirculated. With regard to the flow criteria, others have suggested that if the Council acts without the State Board, they are acting in a way that is not consistent with the Delta Reform Act. The non-binding flow criteria to which Mr. Wright referred was developed by the State Board and was submitted to the Council and the BDCP to inform their planning purposes which they have done. Mr. Fiorini reminded the Council that the Executive Summary of the flow report provided to us by the Board, characterized it as unbalanced and incomplete and cautioned the Council on using information that was unbalanced and incomplete. Ms. Garber also reminded all that BDCP was a separate project by law from the Delta Plan. The sentence that Mr. Mills' commented that referenced water rights being affected was found and was also elaborated on.

Motion (Offered by Johnston; seconded by Fiorini): Staff is directed to continue preparation of the Final PEIR consistent with the direction given at this meeting. The Final PEIR will be made available for public review and comment at least 10 days prior to the Council's May meeting, at

which the Final PEIR will be presented to the Council. The Council will be asked to certify that the PEIR, as revised, is adequate, as required by law. (Agenda Item 6, Attachment 1)

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote), and the motion was adopted.

The video showing vote for Agenda Item 6 can be found at:

<http://dsc.videosscc.com/archives/032813/> Agenda Item 6 Index 12. Archive Segment Number 17 of 62 at 00:25.

The Council recessed for lunch at 11:48 a.m. and reconvened at 1:00 p.m.

6b. Finalize Direction to Staff Regarding Rulemaking Package

Note: Discussions of items on the Matrix with Staff Proposed Revisions to Draft Regulations, including Summary of Comments and Rationale for Changes (Agenda Item 6b, Attachment 1) were heard in different orders on both days pursuant to the determination of Chair Isenberg.

Dan Ray was joined by Deputy Attorney General Christie Henke Vosburg, Cindy Messer and Carl Lischeske for the discussion of Agenda Item 6b. Mr. Stevens provided remarks on the Council on the Rulemaking process and stated at today's meeting the Council is considering possible revisions to the proposed regulations in response to the comments received. Mr. Ray stated many of the comments were related to the criteria that OAL will use in its review of whether the regulations meet APA legal standards. The criteria are: authority, clarity, consistency, necessity, and non-duplication. Ms. Vosberg described the comments and the common themes of the comments and stated responses to comments received on the regulations package would be addressed in the Final Statement of Reasons. Mr. Ray then reviewed each item on the Matrix (Item 6b Attachment 1), requesting Council's direction or approval on all the proposed changes included in the matrix.

Throughout the discussion of Agenda Item 6b and each of the items, the Council Members requested clarification and provided their comments.

Public Comment and Council Motions and Decisions on Matrix with Staff Proposed Revisions to Draft Regulations, Including Summary of Comments and Rationale for Changes

The following are the motions and votes for the Council's actions on each of the items contained in the Matrix with Staff Proposed Revisions to Draft Regulations (Agenda Item 6b, Attachment 1) as well as a summary of public testimony on each item. Full comments may be viewed and listened to via the archived webcast at <http://dsc.videosscc.com/archives/032813/>. In all cases, public testimony occurred prior to a vote by the Council.

Note: The modified rulemaking document that was prepared by staff as a result of Council actions at this meeting is posted on the Council website and available for public review and comment for an additional 15-day period, April 8, 2013 – April 22, 2013. The modified rulemaking can be found at:

<http://deltacouncil.ca.gov/sites/default/files/documents/files/ModifiedRegulationApril2013.pdf>

I. DELTA PLAN POLICIES/REGULATIONS

G P1 – Detailed Findings to Establish Consistency with the Delta Plan/ ~~§5004~~ §5002

Public Comment:

Sean Baghebom, Department of Water Resources, expressed the department's appreciation of the staffs' response to their comments on the EIR and Rulemaking Process. Mr. Baghebom commended the staff for monumental job and stated the Department supported the Delta Plan and its implementation.

Motion (Offered by Johnston; seconded by Nottoli): Approve staff proposed changes with the exception of changing "presumed" to "deemed" in the new suggested regulatory language in subsection (c)(2). The proposed language for G P1 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videossc.com/archives/032813/> Agenda Item 6 Index 19. Archive Segment Number 24 of 62 at 04:26.

WR P1 – Reduce Reliance on the Delta through Improved Regional Water Self-Reliance/ ~~§5005~~ §5003

Public Comment:

John Mills, Offices of John S. Mills, stated he wished to associate himself with Martha Davis' comments/opinion. Mr. Mills commented on WR P1 relating to the consistency of the language throughout the document and noted discrepancies and wondered whether it was intentionally different or different because of the time of the drafting. Mr. Mills referenced page 3, subsection (c)(1) and (c)(2) and noted on page 16, definitions, in subsection b and c, there was similar but not identical language. He also noted on page 3, Item (2), local and regional water storage are mentioned but on page 16 they were not. Mr. Mills stated he hoped the staff can reconcile the differences between the language on page 3 and page 16.

Tom Zuckerman, Central Delta Water Agency, commented on the inconsistency with provisions of the Delta Reform Act and the Area of Origin laws that apply in the Delta and the Delta Protection Act. Mr. Zuckerman felt the language about use of water in the Delta should be excluded in paragraph A and Paragraph B on Page 3. Mr. Zuckerman commented on reduced reliance and regional self sufficiency and felt that the phrase "used in the Delta" should be deleted from subsections (a) and (b). Mr. Zuckerman questioned how someone in the Delta could improve regional self-sufficiency and reduce reliance at the same time.

Audrey Patterson, San Joaquin Tributaries Authority, made comments regarding former regulatory language of WR P1 now being part of the narrative in the Delta Plan. Ms. Patterson also urged for more clarity and more definition of reduced reliance in the new section (c) (1) and (b).

Terry Dermody, San Joaquin County, referring to page 3, new c (1) (C), Mr. Dermody commented on the reporting requirements and the need for a reference point from which a person wanting to comply with the regulation would use. Mr. Dermody stated it was necessary to know what date they would measure their usage against. Mr. Dermody stated a measuring point was needed in order to make a determination that reliance on the Delta has been reduced.

Mr. Dermody suggests adding to the regulation, a date or a statement i.e., “adoption of the Delta Plan”.

Greg Zlotnick, San Luis and Delta Mendota Water Authority, commended the staff for their hard work and felt the authority question was fundamental to this policy and others. Mr. Zlotnick stated he appreciated Council member Gray’s remarks about seeing more details on what the argument was on the staff suggestions. Since the plan won’t be adopted until May, Mr. Zlotnick felt an agenda item at the April meeting would be helpful to discuss what the arguments are for the changes in the regulation. Mr. Zlotnick commented on baselines and stated if a time certain is picked for baseline, the water year type needs to be incorporated into development of the baseline. In terms of WR P1 Mr. Zlotnick discussed the water transfers and covered action review process.

Motion (Offered by Johnston; seconded by Fiorini): Approve staff proposed changes, reviewing Mr. Mills’ language and Council member Nottoli’s issue with the phrase about groundwater conjunctive use projects involving various water supplies in subsection (c)(2). The proposed language for WR P1 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 4/1 (Johnston, Fiorini, Isenberg, Nottoli/Gray opposed) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 6 Index 25. Archive Segment Number 30 of 62 at 09:20.

WR P2 – Improved Transparency in Water Contracting/ ~~§5006~~ §5004

Public Comment:

Doug Wallace, East Bay Municipal Utilities District, complimented the staff generally on removing text that was not needed and making a much cleaner document that meets the necessity of clarity. Regarding transparency, Mr. Wallace stated he felt it was not needed as DWR sent a letter saying water contractors were already complying with the established procedures and it was not clear what the other incentive provides other than another “hoop to jump”.

Motion (Offered by Johnston; seconded by Nottoli): Approve staff proposed changes. The proposed language for WR P2 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 6 Index 27. Archive Segment Number 32 of 62 at 00:02.

ER P1 – Update on Delta Flow Objectives/ ~~§5007~~ §5005

Public Comment:

None

Motion (Offered by Johnston; seconded by Gray): Approve staff proposed changes. The proposed language for ER P1 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 27. Archive Segment Number 32 of 62 at 06:58.

ER P2 – Restore Habitats at Appropriate Elevations/ ~~\$5008~~ \$5006

Public Comment:

None

Motion (Offered by Johnston; seconded by Fiorini): Approve staff proposed changes. The proposed language for ER P2 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 27. Archive Segment Number 32 of 62 at 10:16.

ER P3 – Protect Opportunities to Restore Habitat/ ~~\$5009~~ \$5007

Public Comment:

Melinda Terry, California Central Valley Flood Control Association, commented on the reclamation districts and their requirement to mitigate when doing levee improvement projects. Ms. Terry stated there are limited areas in the Delta in which to mitigate and as more habitat is created, there is less land available for mitigation as they are not allowed to mitigate outside the Delta. ER P3 calls to regulate or mitigate which causes her concern. Ms. Terry felt it didn't make sense for levee improvement projects that contribute to the coequal goals to have to mitigate for projects that benefit people outside of the Delta. Ms. Terry stated the burden and cost should not rest on the Delta residents and it was unclear to her why the policy was being applied to levee projects.

Motion (Offered by Johnston; seconded by Nottoli): Approve staff proposed changes. The proposed language for ER P3 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Fiorini was not present at time of vote but vote was left open for him to add on his vote upon his return.) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 30. Archive Segment Number 35 of 62 at 00:06.

ER P4 – Expand Floodplains and Riparian Habitats in Levee Projects/ ~~§5010~~ §5008

Public Comment:

Melinda Terry, California Central Valley Flood Control Association, commented on other planning efforts that are occurring with levee setbacks. Ms. Terry stated under the Central Valley Flood Control Plan, levee setbacks are addressed. Ms. Terry stated the cost analysis failed to look at the budgets of the Delta reclamation districts and stated if a Delta reclamation district doesn't have the money to do the project she didn't understand why they would have to analyze the project. Ms. Terry felt there is a need to identify the additional funding sources as Prop 218 only allows reclamation districts to assess landowners for the special benefits their parcels receive from the additional flood protection and habitat. All other general benefits that are not specific to the parcel need an additional funding source and the reclamation districts can only pay for the portion that can be assessed under Prop 218 otherwise it is considered a tax.

Motion (Offered by Johnston; seconded by Fiorini): Approve staff proposed changes. The proposed language for ER P4 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Gray was not present at time of vote but vote was left open for her to add on her vote upon her return) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 6 Index 32. Archive Segment 37 of 62 at 02:51.

ER P5 – Avoid Introductions of and Habitat Improvements for Nonnative ~~Invasive Species/ §5011~~ §5009

Public Comment:

Greg Zlotnick, San Luis and Delta Mendota Water Authority, wanted to confirm the new language that was added in the policy (the fish and game definition) applied to Striped Bass.

Motion (Offered by Johnston; seconded by Fiorini): Approve staff proposed changes. The proposed language for ER P5 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Gray was not present at time of vote but vote was left open for her to add on her vote upon her return) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 6 Index 33. Archive Segment 38 of 62 at 00:55.

Note: ER P5 was reconsidered and action amended on Day 2.

DP P1 – Locate New ~~Urban~~ Development Wisely/ ~~§5012~~ §5010

Public Comment:

None

Motion (Offered by Johnston; seconded by Nottoli): Approve staff proposed changes. The proposed language for DP P1 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Gray was not present at time of vote but vote was left open for her to add on her vote upon her return) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 33. Archive Segment 38 of 62 at 14:47.

DP P2 – Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats/ §5013 §5011

Public Comment:

None

Motion (Offered by Nottoli; seconded by Johnston): Approve staff proposed changes. The proposed language for DP P2 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 33. Archive Segment 38 of 62 at 16:56.

RR P1 – Prioritizing of State Investments in Delta Levees and Risk Reduction/ §5014 §5012

Public Comment:

None

Motion (Offered by Gray; seconded by Fiorini): Approve staff proposed changes. The proposed language for RR P1 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 4/0 (Gray, Fiorini, Isenberg, Nottoli) (Johnston was not present at time of vote) (Damrell abstained from vote), and the motion was adopted.

The video showing this vote can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 33. Archive Segment 38 of 62 at 23:07

Following the vote on RR P1, Chair Isenberg noted that Council member Gray was not present at the time of vote on ER P3, ER P4, and DP P1. The vote was held open to allow Council member Gray to record her vote. Council member Gray supported the motions and was in support of the actions for ER P3, ER P4, and DP P1.

The video showing this Council member Gray's votes can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 33. Archive Segment 38 of 62 at 23:22.

RR P2 – Require Flood Protection for Residential Development in Rural Areas/ §5015
§5013

Public Comment:

Melinda Terry, California Central Valley Flood Control Association, commented on the balance of protecting people and preserving the Delta as a place. She commented on building restrictions in the primary and secondary zone and FEMA building standards. She believes the policy applies to new development not existing development. Property insurance rates are being raised on those properties and there are also limited funds for levee improvements. Ms. Terry also commented on RR P3 and RR P4 and stated she was confused regarding how the policies will be implemented going forward. She also commented on encroachment issues and permitting.

Motion At the suggestion of the Chair, and without Council objection, formal action on RR P2 was deferred to Friday, March 29, 2013, however public comment was heard.

The video showing this action can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 6 Index 34. Archive Segment 39 of 62 at 07:32.

Following the public comment for RR P2, Chair Isenberg summarized the remaining items on the agenda and summarized the schedule for the next day's meeting.

7. Public Comment

Chair Isenberg asked if there were any members of the public wishing to address the Council and comments were provided by:

Charles Gardiner, Delta Vision Foundation, provided a letter to the Council that has been posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/BDCP_PLUS_IS_NEEDED_TO_AC_COMPLISH_TWO_COEQUAL_GOALS.pdf. Mr. Gardiner recommended modifications such as making the Council actions consistent and clearly identified. Mr. Gardiner suggested that they should be clarified, put in one place, and deadlines set to hold the Council accountable in the twelve identified actions. Regarding the Executive Summary, clarify top level objectives bringing those items forward in Exec Summary.

Doug Wallace, East Bay Municipal Utilities District, asked that the Council reconsider the definition of "significant impact" to include beneficial actions. Mr. Wallace suggests encouraging or some sort of incentive for consultation with staff in lieu of a formal consistency determination because there are still some good projects going on in the Delta.

The meeting adjourned for the day at 4:53 p.m.

Friday, March 29, 2013, 9:00 a.m. – 3:30 p.m.

8. Call to Order

The meeting was called to order at 9:04 a.m., with Chair Isenberg presiding.

9. Roll Call – Establish a Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established. The following members were present: Patrick Johnston, Frank Damrell, Gloria Gray, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: Hank Nordhoff

12. Delta Plan (*Continuation of Agenda Item 6 from Thursday, March 28, 2013*) (Item 12 taken out of order and heard before Agenda Items 10 and 11)

Chair Isenberg reaffirmed the item on the matrix with staff proposed revisions to draft regulations (Agenda Item 6b, Attachment 1) that had been held over for action, RR P2 and the items on the matrix that the Council hadn't reviewed before recessing on the previous day. Dan Ray was joined by panel members, Christie Henke Vosburg, Cindy Messer and Carl Lischeske to continue the discussions of the previous day.

Before continuing with the remaining items on the matrix, Council member Fiorini requested the Council return to ER P5 to amend the policy.

The following is the continuation of the motions and votes for the Council's actions on the remaining items contained in the Matrix with Staff Proposed Revisions to Draft Regulations (Agenda Item 6b, Attachment 1) as well as a summary of public testimony on each item. Full comments may be viewed and listened to via the archived webcast at <http://dsc.videosscc.com/archives/032813/>. In all cases, public testimony occurred prior to a vote by the Council.

Note: The modified rulemaking document that was prepared by staff as a result of Council actions at this meeting is posted on the Council website and available for public review and comment for an additional 15-day period, April 8, 2013 – April 22, 2013. The modified rulemaking can be found at: <http://deltacouncil.ca.gov/sites/default/files/documents/files/ModifiedRegulationApril2013.pdf>

ER P5 – Avoid Introductions of and Habitat Improvements for Nonnative Invasive Species/ §5014 §5009 (*Item continued from March 28, 2013*)

Public Comment:

None

Amended Motion (Offered by Johnston; seconded by Fiorini): Approve staff proposed changes and with a modification to reference striped bass and bass to the staff recommended language. The proposed language for ER P5 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 4/0 (Johnston, Gray, Fiorini, Isenberg) (Nottoli not present at the time of vote but it was held open to allow him to cast his vote upon his arrival) (Damrell abstained from vote), and the amended motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 8-12. Archive Segment 43 of 62 at 5:16.

Without Council objection, the Council moved to Part II. Definitions, in order to allow Council member Nottoli to arrive and take part in the risk reduction discussions.

II. DEFINITIONS

Definitions/ ~~§5002 and §5003 merged with~~ §5001

Public Comment:

Erik Ringelburg, Local Agencies of the North Delta, commented on definition of encroachment on page 18, relates back to RR P3 and RR P4, felt the definition is overly broad and is too restrictive.

Karen Medders, Delta resident, commented on substantial and significant impacts, giving an example of a conceptual project that she felt had significant and negative impacts in the Delta with setback levees on Miner Slough. Ms. Medders felt the project would have negative impacts on Steamboat Slough, taking out three marinas. Ms. Medders commented on tidal marsh that was created first then restored the proper restored marsh will weaken tidal energy, changing tidal flows in Steamboat and Sutter Sloughs from bi-direction flow to outflow only.

Tom Zuckerman, Central Delta Water Agency, commented on "Response to Comments" that is being prepared and requested clarification if responses would be "sent". Mr. Zuckerman felt it was unfair not to have the opportunity to review the staff's responses to the comments previously submitted. Mr. Zuckerman formally requested the Council extend the time to respond to the changes that are suggested in the Regulations before the Regulations are adopted. Following the discussion on the timing of the responses to comments, Mr. Zuckerman commented on the Definitions, page 16, (C) (3), and stated that he disagreed with removing (A) through (F) as he felt the definition added clarity and felt it was important to clarify the scope of covered actions.

Following Mr. Zuckerman's public comment and because Council member Gray had to leave the meeting, Council member Fiorini offered the following motion in which Council member Gray cast an affirmative vote, however the roll was left open to take up at the conclusion of the agenda item.

Original Motion (Offered by Fiorini and seconded Johnston): Approve changes as suggested by staff on pages 14-20 and incorporate an exemption date change on page 20, regarding temporary water transfers. The proposed language for the definitions are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

The video showing this action can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 12 Index 6. Archive Segment 47 of 62 at 00:07.

Brenda Burman, Metropolitan Water District of Southern California, stated Metropolitan supported a straight exemption of one-year transfers as they are fundamental to the operations. Ms. Burman explained how transfers are used in wet and dry years.

Substitute Motion (Offered by Nottoli; seconded by Fiorini): Approve the staff suggested languages on pages 14-20 and include the date changes in the original motion offered by Council member Fiorini as well as retaining the red-lined language included in the core strategies on page 16, (3) in (A-F).

Vote: 4/0 (Johnston, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote) and the substitute motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 12 Index 7. Archive Segment 49 of 62 at 05:06

Following the vote on the definitions, the Council returned to the risk reduction policy that was held over from the previous day and the remaining items on the matrix the Council hadn't reviewed before recessing on the previous day.

RR P2 – Require Flood Protection for Residential Development in Rural Areas/§5015 §5013 *(Item held over from March 28, 2013)*

Public Comment:

None

Motion (Offered by Fiorini; seconded by Isenberg): Approve staff proposed changes. The proposed language for RR P2 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

The video showing this motion can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 12 Index 10. Archive Segment 52 of 62 at 09:43

The vote was deferred until Council member Johnston returned to the meeting.

RR P3 – Protect Floodways/§5016 §5014 *(Item continued from March 28, 2013)*

Public Comment:

Erik Ringelberg, Local Agencies of the North Delta, commented on the statutory authority over the floodways and stated he felt the CVFPB had jurisdiction making the policy duplicative. Regarding encroachment within the floodway, there was no definition of flow impediments.

Motion (Offered by Johnston; seconded by Fiorini): Approve the staff proposed changes. The proposed language for RR P3 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 4/0 (Johnston, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote) and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 12 Index 12. Archive Segment 54 of 62 at 00:21.

Following the vote on RR P3, the Council recessed for 10 minutes returning to the vote for RR P2 to allow Council member Johnston to cast his vote.

RR P2 – Require Flood Protection for Residential Development in Rural Areas/§5015 §5013 *(Vote deferred as indicated above.)*

Vote: 4/1 (Johnston, Fiorini, Isenberg, Damrell/Nottoli opposed) and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/032813/> Agenda Item 12 Index 10. Archive Segment 54 of 62 at 03:33.

RR P4 – Floodplain Protection/~~§5017~~ §5015 (Item continued from March 28, 2013)

Public Comment:

Erik Ringelberg, Local Agencies of the North Delta, gave an example of the difficulties of doing a stream restoration project, and the significant impact and because the project is a grant project, funding is in issue. Mr. Ringelberg questioned what would be considered “best available science” and whether the analysis that will have to be done goes beyond what is required by the Corp of Engineers. Mr. Ringelberg is concerned about ensuring consistency.

Motion (Offered by Johnston; seconded by Fiorini): Approve the staff proposed changes. The proposed language for RR P4 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item%206b_Attach_1.pdf

Vote: 4/0 (Johnston, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote) and the motion was adopted.

The video showing this vote can be found at <http://dsc.videoss.com/archives/032813/> Agenda Item 12 Index 14. Archive Segment 56 of 62 at 00:16.

6c. Final Delta Plan (Item continued from March 28, 2013)

Cindy Messer led the discussion of Agenda Item 6c, which was continued from Thursday, March 28, 2012. Ms. Messer summarized the categories of comments received on the Final Draft Delta Plan and in its review. Staff identified that most comments were already addressed through the EIR and Rulemaking processes. Ms. Messer described the main categories of the comments and stated the proposed staff revisions were nonsubstantive and are listed in the Consent Checklist (Item 6c, Attachment 1). The list included minor editorial, grammatical, technical or factual revisions. Ms. Messer also discussed the next steps for the Delta Plan and stated staff was seeking direction from the Council to make the minor changes that appear on the Consent Checklist. Throughout the discussion, Ms. Messer heard Council members’ comments and provided clarification on the Checklist.

Public Comment – Agenda Item 6c

Audrey Patterson, San Joaquin Tributaries Authority, commented on the changes to the Delta Plan policies and supportive narrative that were now going to be in the Delta Plan rather than the regulatory package, and requested removing language from WR P1. Ms. Patterson cited former subsections a and b, and also SBX 7 Water Code Section 1006.8 (c) and felt the sentence in former subsection a was in conflict with the statutory requirements of SBX 7 and suggested removing language for consistency. Ms. Patterson also requested to comment on former policy ER P1 and requested the Council extend or remove the deadline for the Water Board to set flow objectives. Ms. Patterson stated the deadline was unrealistic as the State Board is phasing the flow objectives beginning with Phase 1, which is outside of the Delta that is regulated by the Delta Plan.

Motion (Moved by Johnston; seconded by Fiorini) accept the staff proposed changes on the 39 consent items, except Item 15 and Item 18, and direct staff make revisions according to the direction and discussion consistent with Council direction. The proposed language on the Council Consent List is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6c_Attach_1.pdf The staff will

also make conforming changes to the Delta Plan and to any changes in the corresponding regulations as directed by the Council.

Vote: 4/0 (Johnston, Fiorini, Isenberg, Nottoli) (Damrell abstained from vote) and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosc.com/archives/032813/> Agenda Item 12 Index 16. Archive Segment 58 of 62 at 05:18.

11. Delta Independent Science Board Report *(Item taken out of order and heard at the conclusion of the Delta Plan discussions, Agenda Item 12.)*

Without objection from the Council, the Delta ISB Report was taken out of order and heard at the conclusion of the Delta Plan discussions and presented by Chair-elect Dr. Tracy Collier. Dr. Collier briefed the Council on the recent public teleconference held on March 27, 2013. Action Items from the teleconference included discussion and finalization of the report entitled "DISB Review of Science Programs that include Habitat Restoration in the Sacramento-San Joaquin Delta and Suisun Marsh"; comment letters entitled "DISB Comment Letter – Bay Delta Plan SED" and DISB Review of BDCP Chapter 7, Administrative Draft of December 12, 2012". Dr. Collier stated other discussion items included a review of the Delta ISB's workplan and planning for its next meeting.

Throughout the presentation of the ISB Report, Dr. Collier answered Council members' questions and provided clarification.

10. Lead Scientist's Report (Water Code §85280) *(Item taken out of order and heard at the conclusion of the Delta ISB Report, Agenda Item 11.)*

Without objection from the Council, the Lead Scientist's Report was taken out of order and heard at the conclusion of the Delta ISB Report. Dr. Peter Goodwin presented the Lead Scientist's Report. Dr. Goodwin reported on the Delta Science Program funded research web pages; a joint series of workshops by the Delta Science Program and Department of Fish and Wildlife, overview of the Lead Scientist's recommendations to the State Water Resources Control Board on the Bay Delta Plan Update Next Steps, highlights of the 2013 Delta Science Fellow solicitation, and a summary of the current numbers relevant to Delta water and environmental management. Dr. Goodwin provided the Council with "By the Numbers", created by Emily Mortazavi, Delta Science Program Intern and updated on March 29. "By the Numbers" is posted on the Council website at

http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_10_By%20the%20Numbers.pdf. Next, in response to a request from Council member Fiorini regarding sea level rise, Dr. Goodwin provided a PowerPoint that showed how the 55 inch sea level rise would not be the same in all places. The presentation has been posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_10_Flood_Profile.pdf

Throughout the presentation of the Lead Scientist's Report, Dr. Goodwin answered Council members' questions and provided clarification.

Public Comment – Agendas Item 10 and 11

John Mills, Offices of John S. Mills, commented on how the Delta Science Program is premised on promoting science based adaptive management and adaptive management is predicated on on-going knowledge acquisition which speaks to the need for a rigorous science program. Mr. Mills discussed his experience on the CALFED Ecosystem Restoration Roundtable and as he looks at what we are facing with the highly complex ecosystem, this requires us working

together to achieve the coequal goals by helping with the information we have as well as the Science Program by creating a better exchange of information. If there are challenges such as budget, staffing problems, political support, let them know so they can help. Mr. Mills urged for a rigorous science program and reiterated their desire to help.

13. Public Comment

Chair Isenberg asked if there were any members of the public wishing to address the Council – there were none.

14. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; (d) other requests from Council members; and (e) confirm next meeting date – April 25, 2013.

The meeting was adjourned at 1:16p.m.